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Viewing cable 09PORTAUPRINCE270, HAITI: ELECTORAL COUNCIL MAY DISREGARD COURT

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Reference ID	Created	Released	Classification	Origin
09PORTAUPRINCE270	2009-03-11 19:42	2011-08-30 01:44	CONFIDENTIAL	Embassy Port Au Prince

Appears in these articles:

<http://www.haiti-liberte.com/archives/volume4-51/vendeur%20de%20drogue.asp>
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C O N F I D E N T I A L SECTION 01 OF 02 PORT AU PRINCE 000270

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SUBJECT: HAITI: ELECTORAL COUNCIL MAY DISREGARD COURT RULING IN FAVOR OF LAVALAS

REF: A. PORT AU PRINCE 122
[1B.](#) PORT AU PRINCE 233

Classified By: Ambassador Janet A. Sanderson for reasons 1.4 (b) and (d)

¶11. (C) Summary: The Provisional Electoral Council (CEP) has rejected a March 9 court ruling enjoining electoral authorities to include representatives of former President Jean-Bertrand Aristide's Fanmi Lavalas party in the upcoming senatorial elections. The CEP and its supporters say that the court has no jurisdiction over electoral matters. It is not yet clear whether the CEP will appeal the court's injunction or simply ignore it. The court's decision came just after a smaller-than-expected crowd of pro-Lavalas demonstrators 'welcomed' former President Bill Clinton and UN Secretary-General Ban Ki-moon to Haiti for their March 9-10 visit and demanded the return to Haiti of exiled former President Aristide. Aristide's return, not elections, is the theme of the Lavalas mobilization drive in response to their party's exclusion from the Senate contest. End summary.

EMERGENCY COURT RULES IN FAVOR OF LAVALAS

¶12. (SBU) Judge Jean Claude Douyon ruled March 9 that the Provisional Electoral Council (CEP) had violated Fanmi Lavalas's 'political rights' by excluding all of the party's candidates from the upcoming elections (ref A). Judge Douyon, acting on an emergency petition filed by Lavalas with a special chamber of the Port-au-Prince civil court of first instance (the 'Referee Tribunal'), held that while individual Lavalas candidates may be accepted or excluded according to the provisions of the electoral law, the CEP's blanket exclusion of the party from April's partial Senate elections was in violation of the law. (Note: The Referee Tribunal is reserved for cases requiring quick decisions. End note.) Local Lavalas leaders had petitioned the court to reverse the CEP's recent decision excluding 12 candidates supported by FL's Executive Committee. Dozens of noisy Lavalas partisans packed the courtroom March 6 for a hearing on the matter; the judge threatened to expel them at one point for interrupting the proceedings. The CEP President and Director General were summoned to that hearing but sent lawyers in their place, citing concerns for their security.

ELECTORAL COUNCIL MAY DISREGARD RULING

¶13. (C) In a March 10 communique, the CEP rejected Judge Douyon's decision, arguing that only the CEP's internal appeals panels established by the July 2008 electoral law have jurisdiction over electoral disputes. The CEP communique noted that the judge had not allowed its lawyers to make the CEP's case before the court. The CEP statement was silent on the question of how it would proceed, but noted that its published list of approved candidates already took account of the issues the court raised. A UN advisor to the CEP told Polcouns March 10 that the electoral council would not abide by the court's ruling and would continue its preparations for the upcoming elections.

¶14. (C) Former Senate President Joseph Lambert, a close ally of President Rene Preval and a founding member of his Lespwa coalition, made similar remarks to Poloff March 10. Moving forward without reconsidering the rejected candidates, he said, would allow the CEP to keep to the electoral calendar and hold the elections as scheduled on April 19. The electoral law does not allow recourse to civil tribunals, Lambert argued, adding that in any case the Lavalas matter was not of sufficient urgency to fall under the jurisdiction of Referee Tribunal. The chairman of the Senate's Justice

and Public Security Committee, Senator Youri Latortue, declared to the press March 10 that the CEP alone has jurisdiction over election disputes. But he also noted that it would be politically wise to find a way to allow Fanmi Lavalas candidates to run.

SMALL DEMONSTRATION TO "WELCOME" FORMER PRESIDENT CLINTON

15. (SBU) In response to the party's being shut out of elections, Lavalas activists are seeking every opportunity to continue their mobilization campaign. After a small protest against the CEP February 28 (ref B), hundreds of Lavalas supporters converged on the airport March 9 to "welcome" the arrival of UN Secretary-General Ban Ki-moon and former President Bill Clinton. Haitian police had erected barricades around the airport early that morning to control the crowds, and there were no reported incidents of violence.

The UN SYG and the former U.S. President arrived earlier than expected, and had already left the airport by the time most demonstrators arrived. Embassy observers estimated that fewer than 1,500 joined the crowd as it gathered in front of the Airport, proceeded to the site of the delegation's next meetings in the Cite Soleil slum, and finally moved to the National Palace, where the delegation met with President Preval. The Ban Ki-moon/Clinton motorcade was one step ahead of the protesters at each stop. All along the way, marchers protested poverty and high prices, and demanded the return of Aristide from South Africa. There was hardly a word about elections.

COMMENT

16. (C) Many Embassy contacts make the point that while the CEP may have a plausible legal argument, their apparent decision to proceed in defiance of a court order will almost certainly pose political problems. They also wish that a way could be found include at least some FL candidates on the April ballot. On the other hand, a decision to appeal the ruling or to re-examine the eligibility of excluded candidates would make a postponement of the April elections much more likely.

SANDERSON